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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 ROY GRIFFITH,

10 Plaintiff,

11 v.

12 ROMEO ARANAS, *et al.*,

13 Defendants.

Case No. 3:16-cv-00309-MMD-VPC

ORDER

14 Before the Court is the Report and Recommendation of United States Magistrate
15 Judge Valerie P. Cooke (ECF No. 32) ("R&R" or "Recommendation") relating to Plaintiff's
16 emergency motions for a temporary restraining order and preliminary injunction (ECF Nos.
17 23, 24). Plaintiff filed his objection to the R&R on December 12, 2017.¹ (ECF No. 37.)
18 Defendant responded (ECF No. 38) and Plaintiff replied (ECF No. 39).² For the reasons
19 described below, the Court schedules an evidentiary hearing and refers this case to the
20 Pro Bono Program ("Program") adopted in General Order 2016-02.

21 After screening pursuant to 28 U.S.C. § 1915A, the Court permitted Plaintiff to
22 proceed on one Eighth Amendment claim of deliberate indifference to serious medical

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24 ¹Although objections to the R&R were due by November 23, 2017, Plaintiff filed a
25 motion requesting enlargement of time to answer on November 20, 2017 (ECF No. 33),
26 and Defendants filed their non-opposition on December 4, 2017 (ECF No. 36). In light of
27 Defendants' non-opposition and given that Plaintiff is proceeding *pro se* and faces
28 difficulties gathering documents in the prison environment, the Court grants Plaintiff's
motion requesting enlargement of time to answer.

²LR IB 3-1(a) provides that a reply brief "will be allowed only with leave of court."
Plaintiff did not seek leave to file his reply. Nevertheless, the Court will consider Plaintiff's
reply given the significance of the issues raised and the fact that an evidentiary hearing
will be scheduled.

1 needs against Defendants Dr. Romeo Aranas ("Dr. Aranas") and Dr. Karen Gedney ("Dr.
2 Gedney") for declaratory, injunctive, and monetary relief and against former NDOC
3 Director Greg Cox ("Cox") only with respect to Plaintiff's claim for injunctive relief. (ECF
4 No. 3 at 6.)

5 Plaintiff is infected with Hepatitis-C virus ("HCV") and experiences a number of
6 symptoms as a result: constant joint pain, liver pain, digestive issues, severe rash, and
7 fatigue. (ECF No. 23 at 11.) Additionally, an ultrasound indicated that Plaintiff's HCV is
8 causing his gallbladder walls to thicken. (*Id.* at 12.)

9 In recent years, a cure for HCV has emerged in the form of a class of medications
10 called direct-acting antivirals ("DAA"). These medications are known to cure HCV at a rate
11 of 90-95%. (ECF No. 37 at 9.)

12 Defendants have denied Plaintiff's requests for DAA based on Medical Directive
13 219.01 (ECF No. 37 at 2), which excludes from treatment individuals with Aspartate
14 Aminotransferase Platelet Ratio Index ("APRI") levels lower than 2.0. (ECF No. 37-1 at
15 25.) An APRI score above 1.5 indicates that the patient likely has, or is quickly
16 approaching, cirrhosis of the liver according to prison officials in a similar case. *King v.*
17 *Calderwood*, No. 2:13-cv-02080-GMN-PAL, 2016 WL 4771065, at *5 (D. Nev. Sept. 12,
18 2016), *aff'd sub nom. King v. Cox*, 692 F. App'x 398 (9th Cir. 2017). An APRI score above
19 0.5 indicates the likelihood of some liver damage (fibrosis). *Id.*

20 Plaintiff contends that Defendants have been deliberately indifferent to his serious
21 medical needs by denying him a cure for his HCV. (ECF No. 23 at 4-5.) Plaintiff further
22 contends that Medical Directive 219.01 was enacted solely to meet budgetary restraints.
23 (See *id.* at 10.) Implicit in Plaintiff's argument is that he has been denied DAA solely for
24 nonmedical reasons.

25 Plaintiff seeks to preliminarily enjoin Defendants from enforcing the exclusion
26 criteria set forth in Medical Directive 219.01 against him. (*Id.* at 1.) Plaintiff also seeks a
27 preliminary injunction requiring Defendants to arrange for Plaintiff to be seen by an

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1 independent physician and provide Plaintiff with DAA medication after the independent
2 physician prescribes such treatment. (*Id.*)

3 While preliminary injunctive relief is an “extraordinary remedy,” *Winter v. Nat. Res.*
4 *Def. Council, Inc.*, 555 U.S. 7, 22 (2008), and mandatory injunctive relief more
5 extraordinary still, *Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir. 2009), Plaintiff
6 has alleged facts that raise serious constitutional questions about NDOC’s adherence to
7 Medical Directive 219.01. First, Plaintiff alleges that Medical Directive 219.01 is
8 inconsistent with the current standard of care. Plaintiff provides a copy of the American
9 Association for Study of Liver Disease’s (“AASLD”) recently released guidelines for
10 treatment of HCV. (ECF No. 37-1 at 46-53.) The guidelines recommend treatment “for all
11 patients with chronic HCV infection, except those with short life expectancies that cannot
12 be remediated by treating HCV, by transplantation, or by other directed therapy.” (*Id.* at
13 47.) The guidelines do not recommend postponing treatment for individuals lacking signs
14 of extensive liver damage (such as high APRI scores).


15 Second, Plaintiff alleges that he will suffer irreparable harm in the absence of a
16 preliminary injunction. He alleges that his disease will worsen—his liver scarring, mental
17 and physical fatigue, digestive issues, liver pain, and severe rash will continue unabated.
18 (ECF No. 39 at 4.) He also alleges that the chance of DAA curing his HCV will diminish.
19 (ECF No. 23 at 5; ECF No. 37 at 9.)

20 Due to the importance of the issue before the Court, the Court finds it necessary to
21 hold an evidentiary hearing and appoint counsel for Plaintiff.

22 Accordingly, this case is referred to the Pro Bono Program adopted in General
23 Order 2016-02 for the purpose of identifying counsel willing to be appointed as pro bono
24 counsel for Plaintiff. The scope of appointment will be for the limited purpose of
25 representing Plaintiff in an evidentiary hearing on his emergency motions. By referring this
26 case to the Program, the Court is not expressing an opinion as to the merits of the case.

27 It is hereby ordered that this case is referred to the Pro Bono Program for
28 appointment of counsel for the purposes identified herein.

1 It is further ordered that the Clerk also forward this order to the Pro Bono Liaison.
2 It is further ordered that Plaintiff's Request for Enlargement of Time to Answer (ECF
3 No. 33) is granted.
4 The Court will issue a separate order scheduling the evidentiary hearing to be held
5 within sixty (60) days even if pro bono counsel is not located for Plaintiff.
6 DATED THIS 9th day of January 2018.

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10 MIRANDA M. DU
11 UNITED STATES DISTRICT JUDGE
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